

# CHAPTER 6: LEGISLATIVE PROCEDURES

## ■ Introduction

Procedural rules are not exclusively within the purview of scholars and judges. An astute observer of the 2002 Winter Olympic Games would have noticed that it takes more than strength, endurance, and athletic ability to win medals. Knowledge of the procedural rules can be critical to success. When Kim Dong-Sung crossed into Apolo Anton Ohno's lane, Ohno raised his arms to call attention to the illegal move. Dong-Sung was disqualified, and Ohno received an Olympic gold medal. Likewise, a legislator's effectiveness can be significantly enhanced with an understanding of the rules of procedure.

The efficiency of the Legislature is also improved through the appropriate use of procedural rules. Paul Mason, in the foreword to the 1979 edition of *Mason's Manual of Legislative Procedure*, wrote:

A proper application of the rules of procedure will eliminate controversy, confusion and litigation and will make public bodies more efficient in their work and more pleasant to work in.<sup>2</sup>

Legislative procedures are governed by the following authorities:

- (1) constitutional provisions and judicial decisions interpreting them;
- (2) Montana statutes and judicial decisions interpreting them;
- (3) *Rules of the Montana Legislature* (Senate Rules, House Rules, and Joint Rules);

- (4) tradition; and
- (5) *Mason's Manual of Legislative Procedure*.

These authorities are listed in order of priority. A provision at one level may be implemented or fleshed out by provisions farther down this hierarchy.

Committee procedural rules are another set of rules that apply to specific committees. The courts and the Attorney General also play an important role by interpreting the law.

All of these authorities are discussed in more detail below. Finally, a brief overview of important concepts related to rules is presented.

This chapter focuses on the "rules"\* that govern how the Legislature conducts its business during a legislative session. Provisions that address the content of legislation, duties of the Legislature, and interim activities are not emphasized in this chapter.

## ■ Montana Constitution

Constitutional provisions are the overriding authority that may not be violated. Key provisions of the Montana Constitution that impact legislative procedures are presented and discussed below. This information is general and is intended to provide an understanding of

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\* The term "rules" is used generically unless the text refers to specific rules (e.g., Joint Rules).

the framework within which the Legislature must operate.

## ■ **Right of Participation**

Article II, section 8, of the Montana Constitution provides:

The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Committee hearings play a critical role in enabling citizen participation in the legislative process in Montana. Citizens may also participate by communicating with legislators about specific pieces of legislation through letters, electronic mail, or phone messages.

## ■ **Right to Know**

Article II, section 9, of the Montana Constitution provides:

No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Moreover, Article V, section 10 (3), of the Montana Constitution provides:

The sessions of the legislature and of the committee of the whole, all committee meetings, and all

hearings shall be open to the public.

Based on these provisions, meetings must be open to citizens. Public notice must be given. Furthermore, once a legislator has requested that legislation be drafted, any information related to this request must be provided to a citizen upon request.\*

## ■ **Extraordinary Votes**

The Montana Constitution requires extraordinary votes to approve certain types of legislation (see **Table 6-1**).

## ■ **Governor's Veto**

Veto powers of the Governor and procedures are addressed in Article VI, section 10, of the Montana Constitution.

## ■ **Other Procedural Matters Addressed by the Constitution**

Article V, sections 6, 10, and 11, of the Montana Constitution contain some specific provisions that govern how the Legislature operates. These requirements include:

- ✓ every vote of each member on each substantive question must be recorded and made public;

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\* Although this rarely occurs during the legislative process, sometimes constitutional rights must be balanced; balancing may result in one right taking precedence. "When the demands of individual privacy clearly exceed the merits of public disclosure, government documents and operations are not subject to public disclosure." (37 A.G. Op. 170 (1978))

**Table 6-1.** Constitutional Extraordinary Vote Requirements

Type of Legislation	Vote Required	Montana Constitution Section
Grant to a public entity immunity from suit	2/3 of each house	Art. II, sec.18
Override vetoed bill	2/3 of present members of each house	Art. VI, sec.10
Appropriate highway revenue for nonhighway purposes	3/5 of each house	Art. VIII, sec. 6
Create state debt	2/3 of each house	Art. VIII, sec. 8
Appropriate principal of coal severance tax trust fund	3/4 of each house	Art. IX, sec. 5
Appropriate principal and one-tenth of the interest and income deposited in the Montana tobacco settlement trust fund	2/3 of each house	Art. XII, sec. 4
Propose amendment to Montana Constitution	2/3 of all members of the Legislature	Art. XIV, sec. 8

- ✓ each house is required to keep a journal, make rules for its proceedings, and choose officers from among its members;
- ✓ each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members;
- ✓ a majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.
- ✓ neither house may adjourn or recess for more than 3 days or to any place other than that in which the two houses are sitting without the consent of the other;
- ✓ the Legislature is required to meet each odd-numbered year for not more than 90 legislative days;
- ✓ any Legislature may increase the limit on the length of any subsequent session; and
- ✓ the Legislature may be convened in special sessions by the Governor or at the written request of a majority of the members.

The oath of office is specified in Article III, section 3, of the Montana Constitution.

## ■ Montana Statutes

The index to the MCA includes several pages referencing sections related to the Legislature (see "LEGISLATURE" in the general index to the MCA). The statutes contain numerous provisions related to legislation, organization of the Legislature, and other topics addressed in other chapters of this handbook. There are few provisions that deal strictly with procedural matters during the legislative session. Examples of these include sections that address procedures in response to action by the Governor (e.g., veto of legislation) and compelling the attendance of witnesses. Title 5, MCA, contains the Legislative Branch statutes.

## ■ Rules of the Montana Legislature

The Montana Constitution gives each house the authority to make rules for its proceedings.

The primary source of information on how the Legislature conducts its business is the *Rules of the Montana Legislature*. Topics covered by these rules include administration, decorum, committees, legislation, floor actions, motions, and rules about rules.

Joint Rules, Senate Rules, and House Rules are adopted by resolution at the beginning of each legislative session. Traditionally, the rules of the previous Legislature are adopted temporarily (with or without exceptions) until the

resolutions for the current session are approved. Once the rules are adopted, the rules are published by the Legislative Services Division in a booklet that includes a table of contents and an index. The index makes this booklet a useful reference source for legislators.

## ■ Tradition

In both houses of the Montana Legislature, two categories of traditional practices have evolved. A description of each type and its place in the framework follow.

### ■ **Procedures Not Addressed by the Rules of the Montana Legislature**

The traditional practices that fall into this former category are a recognized source of procedural rules. According to *Mason's Manual of Legislative Procedure*, custom, usage, and precedents take priority over the adopted parliamentary authority (*Mason's Manual*).

### ■ **Practices That Conflict With the Rules of the Montana Legislature**

The rules adopted take priority over custom, usage, and precedents. The use of a traditional practice that conflicts with any of these rules is a violation of the rules. See below for more information about "Violations of Rules" and "Suspension of Rules".

## ■ Mason's Manual of Legislative Procedure

Under the rules adopted by the Montana Legislature, *Mason's Manual of Legislative Procedure* (2000) governs the proceedings of the Senate and the House of Representatives in all cases not covered by the Joint, Senate, or House rules. *Mason's Manual of Legislative Procedure* is a parliamentary manual designed specifically for state legislatures. The manual is a logically organized compilation of the practices and precedents of legislative bodies, usually stated in the form of rules.

Parliamentary procedures for legislatures are sometimes different from the procedures used by private organizations, such as those found in *Robert's Rules of Order*. For example, under the Senate and House Rules (2007) and *Mason's Manual of Legislative Procedure*, a motion made in the Montana Legislature does not require a second.

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Useful features of the manual include:

- ✓ a brief index and general index enable the user to look up specific questions;
- ✓ the table of contents identifies topics of interest;
- ✓ a list of motions categorizes common motions; and

- ✓ the introduction covers principles of parliamentary law.

Furthermore, a review of *Mason's Manual of Legislative Procedure* can provide a legislator with a better understanding of the reasons behind rules and practices.

## ■ Committee Procedural Rules

The rules for each house include a chapter regarding committees. Committees often develop rules of procedure that outline how a committee will conduct its business. The rules should be posted or made available to participants or attendees at committee meetings. This practice helps everyone involved in the meetings to make the best use of their time and facilitates participation in the process. The rules must be consistent with constitutional requirements, Montana statutes, Joint Rules, and the rules of the respective house.

## ■ Interpretation by the Judicial Branch

The Montana Constitution gives each house the authority to make rules for its proceedings. These rules are generally the purview of the Legislature. Unlike legislation, rules are not subject to veto by the Executive Branch, and the role of the Judicial Branch is limited. Chapter 8 of *Mason's Manual of Legislative Procedure* addresses the powers of courts with reference to legislative procedure.

The courts will not disturb a ruling on a parliamentary question made by a legislative or governmental body having authority to make rules for its government and acting within the scope of its powers. Sec. 71, par. 1.

A rule of procedure adopted by a legislative house pursuant to the constitutional provision authorizing each house to determine its rules of procedure cannot be impeached on the grounds that some other rules would be better or more accurate or more just, if the rule, as adopted, does not ignore constitutional restraints or does not violate fundamental rights and there is a reasonable relation between the mode or method of procedure and the result that is sought. Sec. 71, par. 2.

As noted previously, the Montana Legislature must comply with the Montana Constitution and Montana statutes. Court decisions have required the Legislature to change the way that it operates in order to comply with the Montana Constitution. Some court decisions related to the constitutional right to know are summarized below to illustrate the role that the Judicial Branch may play in the operation of the Legislature.

### ■ Bill Drafts

In 1994, a nonprofit environmental organization was denied access to a file on a specific bill draft request based on a Legislative Council rule. District Court Judge Thomas Honzel concluded that under the right to know provision of the

Montana Constitution (Article II, sec. 9), the bill draft files of the Legislative Council and the Environmental Quality Council "should be open to public examination, except in those specific cases where matters of individual privacy are implicated".

The judge's order stated that members of the public have the right to examine draft bills and associated documents during the drafting process and to inspect documents in the custody of the Legislative Council or Environmental Quality Council pursuant to any bill draft request.<sup>3</sup>

### ■ Political Party Caucuses

Judge Honzel also ruled that political party caucus meetings held before and during the session must be open to the public.<sup>4</sup>

## ■ Attorney General's Opinions

The Attorney General is the legal officer of the state and is required by law to give written legal opinions to the Legislature, either house of the Legislature, and other specified state and local officials regarding questions of law. These questions must relate to the office of the requester.

For example, in 1973, Senator Neil J. Lynch, then Senate Majority Leader, and Senator Jim Moore, then Senate Minority Leader, each asked the Attorney General for an opinion regarding the requirements for reconvening the Legislature in special

session. In 1985, the Secretary of State raised a similar question.\*

Other examples of questions relevant to the operations of the Legislature that have been addressed in opinions of the Attorney General include the implementation of term limits, qualification of a member to serve when convicted of a felony, and the power of a legislative standing committee to meet during a special session.

## ■ Learning the Rules: Tips and Concepts

The prospect of becoming a "rules czar" may seem intimidating, particularly in light of the multiple sources of rules, some of which are unwritten. However, a new legislator can lay a solid foundation by taking the following steps:

- ✓ Read or skim through the rules for the previous Legislature prior to the session.
- ✓ Note proposed changes to rules in introduced resolutions. (New text will be underlined, and text to be deleted will be stricken.)
- ✓ As questions arise, look up the answer using the index to the *Rules of the Montana Legislature* or *Mason's Manual of Legislative Procedure*.

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\* The Secretary of State and the legislative leadership each have responsibilities related to convening a special session, so it is appropriate for each to raise the question. (41 A.G. Op. 27 (1985), 35 A.G. Op. 7 (1973), 35 A.G. Op. 6 (1973). 41 A.G. Op. 27 overruled part of 35 A.G. Op. 6.)

- ✓ Ask questions of experienced legislators, legislators who serve on the Rules Committees, or Legislative Services Division committee staff.
- ✓ Understand the following basic concepts.

## ■ "Qué Pasa" or Understanding the Question

A legislator has a right to understand the question that is before the legislative body. To ask a question about a floor procedure or to seek information about a motion before the Senate or the House, a legislator may make a parliamentary inquiry by addressing the presiding officer and saying "I rise to a point of inquiry" or "I rise for a point of information". The presiding officer will ask the requester to state the inquiry and will then respond to the question. A point of inquiry is merely a request for information and may not be debated or appealed.

## ■ Violations of Rules

For both chambers, a question of order (also known as a point of order) is a parliamentary procedure used by a member to bring attention to a possible violation of the rules. A question of order must be raised promptly at the particular time that the question is pending. To raise a question of order, a member must rise and address the presiding officer and state "I rise to a question [point] of order".

A member may appeal the decision of the presiding officer if the motion is seconded by two additional members. After debate, the question is put to a vote. If at least one-half of those voting support the ruling, the ruling stands.

Interpretations of the House Rules by the Speaker of the House may be appealed to the House Rules Committee by 15 representatives. The decision of the House Rules Committee may be appealed to the House of Representatives by any representative.

Violations of the rules that go unnoticed do not necessarily result in dire consequences. When the legislative body acts in violation of its own rules, implied suspension of the rules occurs. The action taken by the body is valid as long as the body has the authority to suspend the rules. The Legislature does not have the authority to violate the constitution or

Montana statutes. Both Senate and House Rules contain a rule that *Mason's Manual of Legislative Procedure* governs the proceedings in all cases not covered by the rules of the respective chamber.

## ■ **Suspension of Rules**

Either house may suspend its own rules, as long as the action taken does not violate constitutional or statutory requirements. Approval by two-thirds of those voting is required to suspend the rules. The Joint Rules allow either house to suspend a rule governing handling of bills upon a two-thirds vote.